

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 16 of 1998

with

CRA Nos. 11/98, 12/98, 13/98, 14/98 & 15/98

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

THAKOREBHAI MAGANLAL NAYAK

Versus

RAMANBHAI MAGANLAL NAYAK

Appearance:

MR GAURANG H BHATT for Petitioners

MR JB PARDIWALA for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/04/98

ORAL JUDGEMENT

These revision applications are disposed of by one common order. By the impugned order dated 12.12.1997 the Third Joint Civil Judge (S.D.), Navsari, has rejected the petitioners' applications Exh. 5 in Civil Suit No. 1997.

Plaintiff petitioners filed a suit against the respondents-defendants for the partition of the HUF property valuing at Rs. 41,50,000/- and claimed their shares of Rs. 20,75,000/- and the detail particulars of HUF property as per the personal knowledge of the plaintiffs have been set out in Schedule A to H submitted along with the suit. The plaintiff petitioners filed an application Exh. 13 on 20.9.1997 for having on record the detail particulars of the fixed deposits in the name of the family members jointly and/or severally since 1987 from the Registrar of Fixed Deposits and to have the certified copies of the extracts of the concerned entries in this behalf and to issue summons for the purpose to the Manager, UCO Bank, Gadat Branch, village Gadat, Tal. Gandevi. This application was rejected by the impugned order on the ground that the application was lacking material particulars.

The family pedigree indicates that the plaintiff-defendants belong to the family of one Shri Maganlal Naik who had two sons Thakorebhai and Ramanbhai. The plaintiffs family is of Thakorebhai Nayak and the defendants family is of Ramanbhai Nayak. The brother of Maganlal is Ishwarlal Bharatkumar Nayak who died on 30.3.1987. The uncle Ishwarbhai B. Nayak was an unmarried person and that the HUF property was administered by him. In view of this, the say of the plaintiffs is that certain deposits were made in the name of the said uncle Ishwarlal B. Nayak along with the plaintiffs and defendants and certain in the name of uncle and the defendants and some Ishwarlal B. Nayak and plaintiff. The learned counsel Mr. Bhatt has given the possible joint names of the fixed deposits as follows:-

1. Ishwarlal B. Nayak with plaintiffs and defendants
2. Ishwarlal B. Nayak with plaintiffs
3. Ishwarlal B. Nayak with defendants
4. Ishwarlal B. Nayak with defendants
5. Ishwarlal B. Nayak with plaintiffs
6. Defendants with defendants

It is contended by the learned counsel that the learned judge has committed material illegality in rejecting the application Exh. 8 on the ground that it was lacking material particulars. He submits that the particulars have been given in the suit itself. Be that as it may, a person making an application under Order 11 Rule 12 is not expected to state what documents he wants to be discovered, because the very object of discovery is to know the documents which are not with one of the parties. A reference be made to the decision of this court in the case of M/S. JHATLOMAL KAKUMAL VS. SHOBHRAJ reported in 25(2) GLR 1236. In view of this, in

my view, the learned judge has committed an error in rejecting the application Exh. 8 on the ground that no particulars of the documents are given. I do not agree with the contentions raised by the learned counsel for the respondents that there being no error of jurisdiction and no interference is called for under Section 115 of C.P.C. There is an apparent illegality in exercise of jurisdiction as the learned judge has proceeded entirely on an erroneous ground. However, I would like to make it clear that the plaintiff is not entitled to receive the accounts pertaining to defendants with defendants.

Consequently the revision applications Nos. 16/98, 11/98, 12/98, 13/98, 14/98 and 15/98 are allowed. The impugned order dated 12.12.1997 passed by the 3rd Joint Civil Judge (S.D.), Navsari, in each revision applications are quashed and set aside. The applications Exh.8, 9, 10, 11, 12 and 13 are granted in the manner as indicated above. The trial court will fix appropriate amount to be paid by the plaintiff to meet the necessary expenses in each matters. Rule is made absolute in each revision application to the aforesaid extent in each revision application.

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